

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Thomas Juliano	Team: Squad #12	CCRB Case #: 201609414	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 11/13/2016 11:47 AM	Location of Incident: Alleyway behind 179-55 Selover Road	18 Mo. SOL 5/13/2018	Precinct: 113		
Date/Time CV Reported Mon, 11/14/2016 1:53 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 11/14/2016 1:53 PM		
<b>Complainant/Victim</b>	<b>Type</b>	<b>Home Address</b>			
<b>Witness(es)</b>	<b>Home Address</b>				
<b>Subject Officer(s)</b>	<b>Shield</b>	<b>TaxID</b>	<b>Command</b>		
1. POM Christophe Costello	03459	954671	113 PCT		
<b>Officer(s)</b>	<b>Allegation</b>			<b>Investigator Recommendation</b>	
A.POM Christophe Costello	Abuse: Police Officer Christopher Costello stopped § 87(2)(b)				
B.POM Christophe Costello	Abuse: Police Officer Christopher Costello frisked § 87(2)(b)				

### Case Summary

On November 14, 2016, § 87(2)(b) filed this complaint over the phone with the CCRB. On November 18, 2016, a duplicate complaint was received from IAB at the CCRB.

On November 13, 2016, at approximately 11:47 a.m., § 87(2)(b) was in his backyard alleyway having an angry discussion with his neighbor § 87(2)(b) about parking arrangements. A neighbor, who would only provide the name § 87(2)(b) called 911 and stated that there was a dispute in progress with a possible firearm. Several officers, including PO Christopher Costello, from the 113<sup>th</sup> Precinct, arrived at the alleyway while § 87(2)(b) and § 87(2)(b) were talking. PO Costello stopped § 87(2)(b) (Allegation A) and frisked § 87(2)(b) (Allegation B). PO Costello issued § 87(2)(b), however, § 87(2)(b) went inside his home though a back door before receiving the summons. § 87(2)(b) later found the summons slipped under his back door.

§ 87(2)(b). No arrests resulted from this incident.

There are no video recordings of this incident.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate as he does not believe in mediation.
- On January 25, 2017, an inquiry was filed with the New York City Comptroller's Office to locate a notice of claim for § 87(2)(b). Results are pending. (Board Review 1)
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### Civilian and Officer CCRB Histories

- § 87(2)(b) has filed seven CCRB complaints.
  - § 87(2)(b) [REDACTED]  
[REDACTED]
  - [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
  - [REDACTED]  
[REDACTED]
  - [REDACTED]  
[REDACTED]

■ § 87(2)(b)  
■  
■  
■ 3)

- PO Costello has been a member of the NYPD for three years. PO Costello has no substantiated CCRB complaints. This is the first case to which PO Costello has been a party.

### **Findings and Recommendations**

#### **Allegation A –Abuse of Authority: Police Officer Christopher Costello stopped § 87(2)(b)**

It is undisputed that § 87(2)(b) was having a loud conversation with his neighbor which contained a heavy use of profanity in the alleyway.

§ 87(2)(b) alleged that he was having a conversation with his neighbor, § 87(2)(b) in the alleyway behind his house regarding parking spaces. § 87(2)(b) stated that the conversation was initially an angry one with both men yelling and cursing; however, it quickly became a civil conversation. While § 87(2)(b) was talking to § 87(2)(b) and his other neighbors, several police officers approached them. PO Costello approached § 87(2)(b) requested his ID, and frisked him (See below). **(Board Review 4)**

§ 87(2)(b) the neighbor with whom § 87(2)(b) argued, was not available for the investigation. His son, who was also present, § 87(2)(b) provided a telephone statement but did not otherwise cooperate. **(Board Review 12)**

§ 87(2)(b) stated that he was in the alleyway during the incident and that an officer approached § 87(2)(b) asked for his ID, and frisked him. **(Board Review 8)**

The 911 call audio shows § 87(2)(b) calling to report a fight in the alleyway. § 87(2)(b) tells the operator that there was a dispute in the alleyway and that one of the men stated that they were going to get their gun. **(Board Review 5)** § 87(2)(b) Provided a phone statement to the CCRB and he confirmed that he called 911 to report a dispute with a weapon. **(Board Review 9)**

PO Costello stated that he received a call over the radio for a dispute in the alleyway with a possible firearm and responded to the scene. PO Costello did not receive a description of the individual with the firearm. When PO Costello arrived at the alleyway there were 4-5 individuals standing there including § 87(2)(b) who was agitated and arguing with the other neighbors. PO Costello recognized § 87(2)(b) and knew that he had been arrested in the past for firearm related charges. Upon approaching the individuals, PO Costello observed § 87(2)(b) spit multiple times on the ground, which is a violation. Because PO Costello received a call regarding a dispute with a possible firearm in the alleyway, because § 87(2)(b) was arguing with his neighbors in the reported location, because PO Costello was familiar with § 87(2)(b) and was aware of his previous arrests, and because PO Costello observed § 87(2)(b) spit on the ground, PO Costello approached § 87(2)(b) and requested his ID. **(Board Review 6)**

A search of the BADS database confirmed that ### ##### has been previously arrested on firearm related charges. **(Board Review 11)**

People v. DeBour 40 N.Y.2d 201 (1976) states that an officer is allowed to conduct a stop of a person if the officer has reasonable suspicion of criminality. **(Board Review 7)**

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

**Allegation B –Abuse of Authority: Police Officer Christopher Costello frisked § 87(2)(b)**

It is undisputed that § 87(2)(b) was frisked by PO Costello; § 87(2)(g) [REDACTED]  
[REDACTED]

§ 87(2)(b) stated that after being stopped by PO Costello, he gave him his ID and went to sit on his car while PO Costello ran his information. Before sitting on the car, § 87(2)(b) pulled up his pants because they were low, reaching to both sides of his hips and grabbing his belt with both hands while facing the officer. PO Costello grabbed § 87(2)(b)'s right arm with his right hand and put him up against the rear of his Jeep and stated “What are you reaching in your waist for?” PO Costello turned § 87(2)(b) around and put him against the rear of the Jeep. § 87(2)(b) put his hands against the top of the Jeep. PO Costello frisked § 87(2)(b)'s chest, arms, waist, and legs. PO Costello also ran his fingers through § 87(2)(b)'s waistband.

§ 87(2)(b) the son of § 87(2)(b) witnessed the incident and provided a phone statement. § 87(2)(b) saw for a brief moment that § 87(2)(b) was frisked, but could not give any information as to the scope of the frisk as he was busy talking to another officer and did not observe the whole thing. **(Board Review 8)**

§ 87(2)(b) confirmed that he called 911 to report a dispute with a weapon. § 87(2)(b) did not see § 87(2)(b) frisked. **(Board Review 9)**

The 911 call audio shows an individual, known to the investigation as § 87(2)(b) calling to report a fight in the alleyway. § 87(2)(b) tells the operator that there was a dispute in the alleyway and that one of the men stated that they were going to get their gun. **(Board Review 5)**

PO Costello stated that he received a call over the radio for a dispute in the alleyway with a possible firearm and responded to the scene. PO Costello did not receive a description of the individual with the firearm. When PO Costello arrived at the alleyway there were 4-5 individuals standing there including § 87(2)(b) who was agitated and arguing with the other neighbors. PO Costello recognized § 87(2)(b) and knew that he had been arrested in the past for firearm related charges. Upon approaching the individuals, PO Costello observed § 87(2)(b) blade his body in a

way that PO Costello could not see his waist, and reach with his right hand into the left side of his jacket and then into the crotch of his pants. PO Costello told § 87(2)(b) to keep his hands visible. PO Costello did not see any bulges on § 87(2)(b) § 87(2)(b)'s waistline was not visible. PO Costello feared for his safety because the call mentioned a firearm, § 87(2)(b) was known to him to carry firearms, § 87(2)(b) turned away from him and reached toward his waistband or crotch area. PO Costello decided to frisk § 87(2)(b) PO Costello frisked his waist and crotch area to make sure that he did not have a firearm in the area that § 87(2)(b) was reaching. PO Costello did not frisk anywhere else on § 87(2)(b)

A search of the BADS database confirmed that § 87(2)(b) has been previously arrested on firearm related charges. **(Board Review 11)**

People v. DeBour 40 N.Y.2d 201 (1976) an officer may frisk with reasonable suspicion of a weapon. **(Board Review 7)**

People v. Rodriguez 18 Misc. 3d 1124A (encl. A45-49) A frisk must be limited in scope to the areas where the officer suspects a weapon may be located. **(Board Review 10)**

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

Squad: 12

Investigator:	_____	<u>Thomas Juliano</u>	<u>February 1, 2017</u>
	Signature	Print	Date
Squad Leader:	_____	<u>SI Lily Carayannis</u>	<u>February 1, 2017</u>
	Signature	Title/Print	Date